

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION OF</b>	<b>)</b>	
<b>LEE M. HARRIS AND GEORGE S. HARRIS, JR. FOR</b>	<b>)</b>	<b>FINDINGS OF FACT</b>
<b>AN AQUACULTURE LEASE LOCATED SOUTH OF</b>	<b>)</b>	<b>CONCLUSIONS OF LAW</b>
<b>MATHEWS ISLAND IN COBSCOOK BAY, EASTPORT,</b>	<b>)</b>	<b>AND DECISION</b>
<b>WASHINGTON COUNTY, MAINE</b>	<b>)</b>	

On November 4, 1999, Lee M. Harris and George (Butch) S. Harris, Jr., of Eastport, Maine applied for an aquaculture lease totaling 30 acres of coastal waters of the State of Maine, located south of Mathews Island in Cobscook Bay, Eastport, Washington County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating the Atlantic salmon (*Salmo salar*), Steelhead trout (*Onchorhynchus mykiss*), Atlantic cod (*Gadus morhua*), Haddock (*Melanogrammus aeglefinus*), and Atlantic Halibut (*Hippoglossus hippoglossus*) using pen culture techniques.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with: the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on April 23, 2001, at 7:00 p.m. in Eastport.

**Evidence Concerning the Nature**  
**and Impact of the Proposed Lease**

Lee M. Harris and George S. Harris, Jr. are the applicants. Lee Harris provided testimony on the application and will be referred to hereafter as the applicant for the purpose of this

document. George S. Harris, Jr., is Lee's brother and hereafter referred to as the applicant's partner. The Harris' have many years of fishing and salmon aquaculture experience. They were business partners in a company that previously held a lease in the location of the proposed lease. That business failed and they are, therefore, seeking this lease to start over on their own. Both have worked and operated fishing vessels and fish farms previously held by their father, George Harris, Sr. Currently the partner services existing leases hauling feed and fish. Exhibits 1 and 2.

The applicant published a notice of the hearing in the April 2, 2001 edition of the Calais Advertiser newspaper in accordance with 12 M.R.S.A. §6072(6)(D). Exhibit 4.

According to the application the operation would deploy two 12-pen steel systems. Each system would contain two adjacent rows of six 24 square meter pens. Each pen would contain industry standard carrier and predator nets. The depth of the nets would vary, with a minimum clearance of 10 feet from the bottom. The mooring system would also be industry standard gear, consisting of 2 – 3 ton mooring stones, double or single blocks for each lateral and diagonal mooring, with anchors or weir stakes placed at the head moorings. Two-inch mooring cable and chain would connect the moorings or anchors to the surface mooring balls and to the pens. According to the application, there would be 13 lateral moorings on the outer side of the pen systems plus 3 – 4 diagonal and head moorings per system. The applicant testified that he was negotiating for steel pen systems that are currently being replaced at existing leases, which are readily available at this time.

The applicant testified that access to the proposed lease would take place from the Eastport public breakwater, his family's property at Harris Point, Eastport or from the nearby Washington County Technical College (WCTC) boat landing in Deep Cove. The applicant testified that riparian property would not be required or requested for use or access. The northwest boundary corner would be approximately 200 feet from the nearest riparian shore.

During the first 1 – 2 years operations would begin on a small scale on the northeast portion of the proposed lease because it is the most protected portion of the proposed lease. Due to the space required for the moorings, there would be an additional 150 feet of distance between the proposed boundary and the pen structures equating to approximately 350 feet between the pens and the nearest shore. In the applicant's opinion this distance is adequate for the type of vessels that navigate the area. The applicant testified that navigation on the open areas of the lease would be allowed.

The applicant stated that daily operations would include feeding approximately 3 times per day in the summer months and 1 – 2 times per day in the winter months depending on temperatures and weather. Initial start-up would require feeding by hand until bulk feeding could be used when the operation is large enough. The applicant stated that net-cleaning operations would be hired out to Card's in Eastport, a company that services nearby salmon leases. This service would be used instead of the on-site pressure washing described in the application. The applicant explained that harvesting of fish would be handled in two ways depending on the quantity being harvested. When harvesting up to 2,000 pounds of fish, the fish would be processed at the Harris facility at Harris Point. Greater harvests would be serviced by one of the larger processing plants such as Connor's in Broad Cove, Eastport. The partner indicated that fish taken to the larger processing plants would be pumped from the pens instead of seined as described in the application. When a large processing facility is used fish would be live-hauled by vessels to the facility.

The applicant testified that he obtained a letter of permission to be within 2,000 feet of existing leases from Connor's Aquaculture, Inc., which holds two salmon aquaculture leases within 2,000 feet of the proposed lease. This permission is in accordance with Department regulations Chapter 2.37(3). Exhibit 5.

The applicant testified that he has commercially fished the proposed lease. He explained that the area is typically harvested and depleted of urchins during the first week of the urchin season and for scallops at the beginning of the scallop season. He stated that if the operation is successful he would like to add species such as urchins and scallops in the future to help those fisheries. He testified that fishing would be allowed on the open areas of the lease, that they did not wish to prohibit those activities. When asked if the area is used as a passageway to access Carrying Place Cove, located due north for clam digging the partner indicated that most diggers access that area by vehicle instead of by boat. According to the application three persons have held the position of Eastport's Harbormaster during the course of keeping the application updated. Each Harbormaster indicated similar opinions on the existing use of the proposed lease; urchin and scallop fishing is limited and no moorings were noted in the area.

The applicant requested to add the harbor Pollock (Pollock) to the species list. He explained that harbor Pollock commonly swim into the pens where they are caught and continue to grow. The applicant testified that they would like to harvest these fish instead of discarding them as waste. He testified that the hatchery sources for salmon and trout would include those listed in the application; Atlantic Salmon of Maine, Connors Aquacultures or other Maine-certified hatcheries. He explained that the cod, haddock and halibut are not readily available from hatcheries, however he included those species to cultivate when they are available from hatcheries. The harbor Pollock would be the only fish captured from the wild as naturally occurs when they swim into the salmon pens and remain there.

The applicant testified that in addition to the commercial operation he requested to have a portion of the proposed lease utilized for alternative species research and education. These activities would be done collaboratively with the WCTC in conjunction with the University of Maine at Machias and Orono staff who work on aquaculture research and education. The maximum number of pens for this purpose would be eight 12 square meter pens moored and

operated in the same manner as described for the commercial activities by the applicant. A letter from WCTC on this proposal was entered into the record. Exhibit 6.

According to the application the proposed lease averages approximately 43 – 45 feet of water depth at mean low water (MLW). The maximum current velocity of 36.8 cm/sec was recorded 1 meter off the bottom on an ebb tide, due south-southeast, magnetic on April 19, 2000. Current data was collected over an 11-hour sampling period, or almost one tidal cycle. The water column chemistry profiles taken the same day indicated that the water column is well mixed. Salinity was 28.0 ‰ and temperature 4.5°C from surface to bottom respectively. The dissolved oxygen ranged from 89.5 to 97.9% saturation with 96.1% saturation at the bottom and 92.4% saturation one meter below the surface. The bottom sediments are predominantly sand and gravel with occasional rocks. During a diver survey a tube forming type of marine worm called Polydora spp. was observed throughout the dive. The dive crossed the proposed lease from the northeast corner diagonally to the southwest corner. Common to abundant flora included the kelps, rockweed and sea lettuce, with a rare occurrence of mermaids hair. Local fauna included observations of sea scallops throughout the dive with rare observations of the frilled anemone, waved whelk, rock crab, snow crab, spider crab, hermit crab, common star, green sea urchin, northern sea cucumber and the sea potato.

The applicant responded to concerns expressed by the Department of Conservation manager of Shackford Head State Park, located on the southeastern shore of Deep Cove approximately 2,500 – 3,000 feet due southeast, regarding debris from pen operations. The applicant testified that they were committed to maintaining the proposed site in a clean manner. He has participated in recent clean-up activities to remove discarded wooden pen frames from the shoreline. Feed bags, either individual or bulk size bags, would be recycled through the feed delivery service.

A biologist employed by the Department, testified regarding the statutorily required site review that he conducted on October 20, 2000. The biologist testified that during a dive made across the proposed lease, the gravel sediments were furrowed with an abundance of urchin tests, chipped scallop shells and piles of detached kelps. In his opinion, this was evidence that the area had been dragged. This is likely due to the recent opening of the urchin season. A video taken throughout the dive was shown. The biologist testified that, given the 350 – 360 foot distance between the pen system and the nearest shore, there would be no navigation or shore access interference as long as navigation was allowed on the open areas of the proposed lease. The biologist explained that the equipment for testing dissolved oxygen failed during the survey. He stated, however, that based on data recently collected at the nearby active leases and data from 1988 – 1992 at the proposed lease location during the previous tenancy, there should be adequate amounts of dissolved oxygen for the proposed activity. During the previous operation no excessive build-up of organic material occurred nor is it anticipated given the current velocities and previous experience at this location. Exhibit 3.

The nearest distances to shore from the northeast and southeast corners, respectively, would be approximately 206 feet and 472 feet. The nearest aquaculture leases are located in Deep Cove (CONA DC) approximately 1,056 feet due southeast and off Goose Island (CONA GI) approximately 1,003 feet due west. Other nearby leases are about 0.70 miles south at Cooper's Ledge, Lubec; 0.63 miles southwest off Gove Point, Lubec; and 0.77 miles southeast off Shackford head, Eastport. The location of the proposed lease falls within an area classified as closed to the harvest of shellfish per Department of Marine Resource Regulation 95.09Z, Closed Area No. 57-B, Deep Cove, Eastport, effective December 3, 1996.

According to the biologist's report, the city manager provided answers to questions concerning ice, navigation and moorings, as a harbormaster was not employed at the time of his call. Regarding ice, it is unlikely given the large tidal range in Cobscook Bay, even sheet ice is

unlikely. Vessel traffic is limited to seasonal uses except by urchin and scallop draggers, primarily at the start of the respective seasons. There are no permitted moorings or traditional storm anchorages within the proposed lease vicinity. The manager indicated that riparians tie their boats at the public breakwater in Eastport.

The proposed lease is located outside of any ¼-mile boundaries regulated by the Department of Inland Fisheries and Wildlife (IF&W) for Endangered and Threatened Species and Significant Habitats for seabird nesting (islands). The nearest designated seabird habitat would be Goose Island, owned by IF&W, and is approximately 0.40 miles due west.

A teacher and representative from the WCTC testified in support of the proposed lease. If the proposed lease were granted, their collaboration with the applicant on research and for education purposes would support an alternative species-breeding program including halibut and haddock plus salmon broodstock. The teacher testified that the maximum number of pens would be eight 12 square meter pens, most likely positioned on the western portion of the proposed lease. The applicant added that the pens used for the collaborative studies would be in lieu of a portion of the twenty-four 24 square meter pens for commercial use until the proposed lease was at full-scale operations, which may take several years.

A fisherman provided testimony in support of the proposed lease. He testified that he has fished the proposed lease area for lobsters, part-time, for the past 25 years and indicated this would not interfere with his fishing practices. In his opinion, salmon aquaculture has not hurt the lobster fishery, which has increased for undetermined reasons. He testified that the opportunity to investigate the use of alternative finfish species other than salmon and trout should be encouraged. In his opinion it is important for the aquaculture industry to diversify into white flesh fish.

### **Findings of Fact**

The proposed lease is located in water depths of 43 – 45 feet approximately 206 feet from the shore at high water. The nearest distance between the shore and the location of the surface structures, pens, would be about 350 – 360 feet according to the Department's biologist and the applicant. According to the Department report, the City Manager indicated that there were no moorings within the proposed lease and that the riparians who own boats keep them at the public breakwater, in downtown Eastport. The applicant did not request or require the use of riparian land. Based on the evidence, I find that the proposed lease will not unreasonably interfere with the ingress and egress of the riparian owners.

According to the application, three separate Eastport Harbormasters indicated that the proposed lease would not interfere with navigation and no moorings are located within the proposed lease area. The Department's biologist testified that the 350 – 360 feet between the pens and the shore would be adequate room for the commonly used type of vessels that would travel the area. The partner testified that access to Carrying Place Cove, due north, was usually by vehicle and not by boat. According to the charts in the application and Department report, the proposed lease is not located within a buoyed channel. It is located within the footprint of a previous lease actively operated between 1988 and 1992. There is at least 1,000 feet between the proposed lease and the two nearest existing leases. Based on this evidence, I find that there is adequate room for vessels to navigate the area, and therefore the lease will not unreasonably interfere with navigation in the area.

According to testimony by a 25-year part-time lobster fisherman of the area, the proposed lease would not interfere with limited lobster fishery in the area. The applicant testified that the existing fisheries would be allowed on the open areas of the lease, including dragging.<sup>1</sup>

---

<sup>1</sup> 12 MRSA §6957 prohibits dragging within 300 feet of the surface structures or pens, if the area is marked in accordance with that statute.



The applicant provided written permission for the proposed lease to be within 2,000 feet of an existing leaseholder's two leases in accordance with Department regulations Chapter 2.37(3). According to the biologist's report, the proposed lease falls with an area classified by the Department's Water Quality Program as closed to the taking of shellfish. Whereas the proposed lease does not include shellfish species, nor is it located within an area identified as having a commercially significant shellfish resource, the matter of determining if the area would be reclassified as open within the next three years is not considered relevant to the decision. Based on the evidence, I find that the lease will not unreasonably interfere with fishing, or other uses of the area given the applicant's willingness to allow existing fishing uses and navigation on the open areas of the lease, or with aquaculture given the written permission provided by the leaseholder of two leases within 2,000 feet of the lease boundaries.

The proposed lease is located outside of any designated habitats by the Department of Inland Fisheries and Wildlife, including eagle nests and seabird nesting islands. According to the biologist's report, a lease operated previously at this location did not experience excessive build-up of organic materials and therefore is not anticipated from the proposed activities. No evidence in the record indicated that the proposed activities would unreasonably interfere with the local flora and fauna at that location. Based on this evidence, I find that the proposed lease activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

According to the application, salmon and trout would be obtained from certified-Maine hatcheries. Cod, haddock and halibut would be obtained from hatchery sources when they are available or from the collaborative research work with the WCTC as described in the record. The applicant testified that source of harbor Pollock (Pollock) would be fish that swim in the pens then become caught when they grow to a size where they cannot exit through the carrier net mesh. The request to raise the incidentally captured pollock is considered equivalent to the

impounding or holding of a wild marine organism and therefore does not meet the definition of aquaculture pursuant to DMR regulations Chapter 2.05(1)(1). However, this does not prevent the harvest and sale of pollock caught in the fish pens according to the applicable groundfish regulations and licensing requirements including but not limited to 12 M.R.S.A. §6501 (Commercial Fishing License) and Department Regulations Chapter 34.10, (Maine Groundfish Management Plan), pertaining to the limitations on season, size, possession and gear restrictions. Based on this evidence, I find that there is an available source of Atlantic salmon, Steelhead trout, Atlantic cod, haddock and Atlantic halibut.

According to the charts in the record, the nearest public landing facility is over 2,000 feet due east-southeast in Deep Cove at the WCTC. There is a State Park located at Shackford Head due south approximately 2,500 – 3,000 feet. Goose Island, due west approximately 0.40 miles is owned by IF&W. There is a landing available at the public breakwater in downtown Eastport several miles due southeast. Based on this evidence, I find that the proposed lease will not unreasonably interfere with the public use or enjoyment and that the site is not located within 1,000 feet of any municipally, state or federally owned beaches, parks or docking facilities.

### **Conclusions of Law**

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of Atlantic salmon (*Salmo salar*), Atlantic cod (*Gadus morhua*), Haddock (*Melanogrammus aeglefinus*) and Atlantic Halibut (*Hippoglossus hippoglossus*) to be cultured for the lease site; and

6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meets the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072 (7-A).

### **Decision**

Based on the foregoing, the Commissioner grants the requested lease of 30 acres to the applicant for a period of ten (10) years from the date of this decision for the purposes of cultivating Atlantic salmon (*Salmo salar*), Steelhead trout (*Onchorhynchus mykiss*), Atlantic cod (*Gadus morhua*), Haddock (*Melanogrammus aeglefinus*) and Atlantic Halibut (*Hippoglossus hippoglossus*), utilizing pen culture techniques as described in the application and the hearing record. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000.00, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. fishing, including lobster/crab, urchin, scallop and recreational fishing is allowed on the open areas of the lease;
2. navigation is allowed on the open areas of the lease; and

3. the lease shall be marked in accordance with U.S. Coast Guard and the Department of Marine Resource requirements.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**